

COUNTERPART NO. 1 OF  
10 COUNTERPARTS.

RECORDATION NO. 7620 Filed & Recorded

AUG 29 1974 - 12:15 PM

INTERSTATE COMMERCE COMMISSION

---

**LEASE OF RAILROAD EQUIPMENT**

**Dated as of June 3, 1974**

**between**

**SEABOARD COAST LINE RAILROAD COMPANY,**

**and**

**AMERICAN SECURITY AND TRUST COMPANY,  
as Trustee**

---

**LEASE OF RAILROAD EQUIPMENT** dated as of June 3, 1974, between SEABOARD COAST LINE RAILROAD COMPANY (hereinafter called the Lessee), and AMERICAN SECURITY AND TRUST COMPANY, as Trustee (hereinafter, together with its successors and assigns, called the Lessor), under a Trust Agreement dated as of June 3, 1974 (hereinafter called the Trust Agreement) with the Trustors of separate trusts created thereunder (each trust being hereinafter sometimes called a Subtrust and each Trustor being hereinafter sometimes called a Beneficiary and collectively called the Beneficiaries).

WHEREAS, the Lessor and the Lessee are entering into conditional sale agreements dated as of the date hereof with GENERAL ELECTRIC COMPANY and GENERAL MOTORS CORPORATION (Electro-Motive Division), respectively (such agreements being hereinafter collectively called the Security Documents and such parties being hereinafter called the Builders) wherein the Builders have agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS, the Builders are assigning their respective interests in the Security Documents to METROPOLITAN LIFE INSURANCE COMPANY (hereinafter, together with its successors and assigns, called the Vendor); and

WHEREAS, the Lessee desires to lease all the units of the Equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's rights by subrogation thereunder to the Builders or

the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§2. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documents. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documents. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Security Documents, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semiannual payments, payable on January 15 and July 15 in each year, commencing January 15, 1975. The rental payment payable on January 15, 1975, shall be in an amount equal to .0262573% of the Purchase Price (as defined in the Security Documents) of each Unit then subject to this Lease for each day (computed on the basis of a 360-day year of twelve 30-day months) elapsed from a date, 30 calendar days prior to the Closing Date (as defined in the Security Documents) for such Unit, to and including the date of such payment. The next 30 semiannual rental payments shall each be in an amount equal to 4.72631% of the Purchase Price of each Unit then subject to this Lease.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 17 hereof. If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day.

The Lessor (except as otherwise may be provided in the Lease Assignment) irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Documents, subject to the limitations contained in the last paragraph of Article 4 of the Security Documents and second, so long as no event of default under the Security Documents shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph prior to 11 a.m., New York time, on the date each such payment is due in Federal funds in the city where such payment is to be made.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10, 13 and 19 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units, or

under the Security Documents in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Documents. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documents shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph D of §15 hereof in respect of such statement.

The Lessee agrees that it will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state,

federal, or foreign taxes ((i) other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and (ii) other than the aggregate of all state, city or other local income taxes or franchise taxes measured by net income based on such receipts, or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by any sale, rental, use, payment, shipment, delivery or transfer of title under the terms of this Lease or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the Security Documents not covered by the foregoing paragraph of this §6, the Lessee shall pay such additional amounts

(which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this §6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue thereafter, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase

Price of such Unit as is set forth in the following schedule opposite such date:

<u>Rental Payment Date</u>	<u>Percentage</u>	<u>Rental Payment Date</u>	<u>Percentage</u>
January 15, 1975 .....	87.0528%	July 15, 1982 .....	68.0088%
July 15, 1975 .....	87.9109	January 15, 1983 .....	64.5365
January 15, 1976 .....	87.7362	July 15, 1983 .....	62.6095
July 15, 1976 .....	87.7454	January 15, 1984 .....	58.9457
January 15, 1977 .....	86.9860	July 15, 1984 .....	56.7482
July 15, 1977 .....	86.7053	January 15, 1985 .....	52.9340
January 15, 1978 .....	85.1930	July 15, 1985 .....	50.4435
July 15, 1978 .....	84.5077	January 15, 1986 .....	46.5195
January 15, 1979 .....	82.3063	July 15, 1986 .....	43.7133
July 15, 1979 .....	81.2405	January 15, 1987 .....	39.7262
January 15, 1980 .....	78.5933	July 15, 1987 .....	36.7060
July 15, 1980 .....	77.3443	January 15, 1988 .....	32.9897
January 15, 1981 .....	74.3798	July 15, 1988 .....	30.0178
July 15, 1981 .....	72.9270	January 15, 1989 .....	26.6662
January 15, 1982 .....	69.6876	July 15, 1989 .....	23.5720
		January 15, 1990 and thereafter .....	15.0000

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in §17 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third .....	15.4478%
Fifth .....	10.2985
Seventh .....	5.1493



Except as hereinabove in this §7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment, and in any event comparable to those insured against by the Lessee in respect of similar equipment owned by it and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documents shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Any insurance proceeds as the result of insurance carried by the Lessee or condemnation payments received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §7. If the Lessor shall receive any such insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this §7 without deduction for such insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. *Reports.* On or before March 31 in each year, commencing with the calendar year 1975, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar

year and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and the Security Documents have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee shall furnish to the Vendor and the Lessor (i) as soon as available and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee two copies of the balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; (ii) as soon as available and in any event within 120 days after the end of each fiscal year of the Lessee two copies of the balance sheet of the Lessee and of the related statements of income and retained earnings of Seaboard Coast Line Industries for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as at the end of and for the previous fiscal year; and (iii) a copy of the Annual Report to the Interstate Commerce Commission which is required to be filed by the Lessee.

As soon as available and in any event within 120 days after the end of each fiscal year, the Lessee will deliver to the Lessor and the Vendor a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under his supervision (specifying the procedures utilized in such review) with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its covenants and obligations under this Lease and the Security Documents and that to the best of his knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant and obligation contained herein and in the Security Documents, or if an Event of Default under this Lease or an event of default under the Security Documents shall exist or if an event has occurred which, with the giving of notice or the passage of time

or both, would constitute such an Event of Default or event of default, specifying such Event of Default, event of default or such event and the nature and status thereof.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of the Security Documents. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Documents and this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

E. any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Documents), and, unless such proceedings shall

have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Documents shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may (with respect to all Units subject to any or all Subtrusts):

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units so terminated shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units so terminated may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and

not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 9¾% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Investment Credit (as defined in § 17 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the ADR Deduction and Interest Deduction (as each is defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The individual Units leased to the Lessee hereunder are subject, severally, to specific Subtrusts under the Trust Agreement. In light of such several ownership, the Lessee acknowledges the right of the Lessor to pursue its remedies provided by subparagraph (a) of this paragraph of this §10 with respect to all Units subject to less than all Subtrusts and, at the same time, to pursue its remedies provided by subparagraph (b) of this paragraph of this §10 with respect to all Units subject to any other Subtrust or Subtrusts.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate with respect to any Units pursuant to subparagraph (b) of the first paragraph of § 10 hereof, the Lessee shall forthwith deliver possession of such Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

- (a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads on which any such Unit or Units may be located to return such Unit or Units) place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

- (b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and



(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of such Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that any or all of the Units are sold pursuant to the exercise of the Vendor's remedies under the Security Documents, the Lessee shall pay to the Vendor .0262573% of the Purchase Price of each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day elapsed from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as there shall be no default under this Lease or under the Security Documents, the Lessee shall be entitled to the possession and use of

the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as there shall be no default under this Lease or under the Security Documents, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such

assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in default under any provision of this Lease.

§ 13. *Right of First Refusal and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the original term or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all but not fewer than all of the Units subject to any Subtrust and then covered by this Lease, for an additional one-year period commencing on the scheduled expiration of the original term or any extended term of this Lease, as the case may be, provided that no such extended term extends beyond January 15, 1993, at a "Fair Market Rental" payable in semiannual payments on January 15 and July 15 in each year of such extended term.

Fair Market Rental shall be computed separately in respect of the Units subject to each Subtrust and shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

In the event that the Lease is not renewed with respect to Units subject to any Subtrust as hereinabove provided and the Lessor elects to sell such

Units to third parties at the expiration of the original or extended term of this Lease, the Lessor shall in a commercially reasonable manner solicit offers to buy such Units, and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable offer, and the Lessee shall have a right of first refusal exercisable by written notice, delivered within 15 days of the receipt of said copy, to purchase such Units at the sale price set forth in such offer.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units, from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may be reasonably requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit not purchased by the Lessee, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the

premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to own its properties and to carry on its business as now conducted, and to enter into the Security Documents and this Lease;

B. the Security Documents have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. This Lease has been duly authorized, executed and delivered by the Lessee, and, assuming due authorization, execution and delivery by the Lessor, constitutes a legal, valid and binding agreement, enforceable in accordance with its terms.

D. the Security Documents (and any assignment thereof) and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America;

E. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Documents or this Lease;

F. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

G. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units.

§ 16. *Recording.* The Lessee, at its own expense, will cause this Lease, the Security Documents and any assignment hereof and thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the

Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§ 17. *Federal Income Taxes.* Each Beneficiary, as the beneficial owner of certain of the Units, shall be entitled (with respect to the particular Units beneficially owned by it, in whole or in part) to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the maximum depreciation deductions based on a 12 year depreciable life for the Units authorized with respect to a Unit under section 167 of the Code utilizing the "asset depreciation range" for the Units prescribed in accordance with section 167(m) of the Code for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10 1972 IRB 8, employing the double declining balance method of depreciation, switching to the sum-of-the-years-digits method of depreciation at the beginning of any tax year without the consent of the Commissioner of Internal Revenue, utilizing the "modified half-year" or the "half-year" convention as provided in Reg. 1.167(a)-11(c)(2) and taking into account an estimated Gross Salvage Value of 10% of the Purchase Price of such Units which will be reduced by 10% of the Purchase Price as provided in Section 167(f) of the Code (such deduction being herein called the ADR Deduction), deductions computed in accordance with Section 163 of the Code in each taxable year of each Beneficiary for all interest paid or accrued during such year by or with respect to such Beneficiary on the Conditional Sale Indebtedness (as defined in the Security Documents) (such deduction being herein called the Interest Deduction), and the 7% investment credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to section 38 and related sections of the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing (except to the extent that any Beneficiary shall have

transferred to the Lessee any tax benefit hereinabove described) and that each of such corporations will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof. The Lessee agrees to keep and make available for inspection and copying by the Beneficiaries such records as will enable each Beneficiary to determine whether it is entitled to the full benefit of the Investment Credit and the ADR Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time each Unit becomes subject to a Subtrust, such Unit will constitute "new Section 38 property" within the meaning of Section 48(b) of the Code, (ii) at the time each Unit becomes subject to a Subtrust, such Unit will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with such Subtrust and (iii) the Lessee will not at any time during the term of this Lease, use or fail to use any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

If a Beneficiary shall lose, or shall not have or shall lose the right to claim, or if there shall be disallowed, or recaptured with respect to a Beneficiary, all or any portion of the Investment Credit, Interest Deduction or ADR Deduction as provided to an owner of property with respect to a Unit for any period prior to the termination of this Lease and full compliance by the Lessee with all of its obligations hereunder as the direct or indirect result of one or more of the following events (hereinafter in this §17 called an Event)—

- (a) a Determination as defined in Section 1313(a) of the Code (hereinafter called a Determination) of additional tax liability resulting from the conclusion of the Internal Revenue Service that (i) any representation, fact, estimate, opinion or other statement which is contained in a certificate furnished to the Lessor by the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, which is contained in any request for rulings of the Internal Revenue Service in connection with this Lease and the transactions contemplated hereby is fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part (including any omission of a material fact which causes such representation, fact, estimate, opinion or other statement to be misleading or insufficient in whole or in part); (ii) any representation, fact, estimate, opinion or other statement made



or stated in writing by the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, in connection with the obtaining of the rulings requested in such request for rulings is fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part (including any omission of a material fact which causes such representation, fact, estimate, opinion or other statement to be misleading or insufficient in whole or in part); or (iii) the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, has taken or failed to take any action whatsoever (including, without limitation, any action in respect of the Lessee's or such affiliate's income tax returns) which action or non-action is inconsistent with or in contravention of any of the matters set forth in such request for rulings or set forth in the rulings issued pursuant thereto or in any closing agreement entered into in connection with such rulings; or

(b) the representations contained in this §17 being untrue,

then, in such Event, the Lessee shall pay to the Lessor as additional rental an amount which, after deduction of all taxes required to be paid by each Beneficiary in respect of the receipt thereof under the laws of any Federal, state, or local government or taxing authority of the United States, shall be equal to any portion of the Investment Credit, lost, not available for claim, disallowed or recaptured by or from each of the respective Beneficiaries as a consequence of such Event plus such sums as, in the reasonable opinion of each of the respective Beneficiaries, will cause such Beneficiary's net return to be equal to the net return that would have been available to each such Beneficiary (computed on the same assumptions as utilized by such Beneficiary in originally evaluating this transaction) if it had been entitled to utilization of all of the Interest Deduction or ADR Deduction which was lost, not available for claim, disallowed or recaptured by or from each such Beneficiary in consequence of the Event plus such sum as will pay or reimburse each such Beneficiary for any interest or penalties incurred in connection with the Investment Credit, ADR Deduction or Interest Deduction which is lost, not available for claim, disallowed or recaptured; *provided, however*, that such additional rental shall not be so paid if a Beneficiary shall have lost, or shall not have the right to claim, or if there shall have been disallowed or recaptured with respect to a Beneficiary, all or any portion of the Investment Credit, Interest Deduction or ADR Deduc-

tion, as provided to an owner of property with respect to a Unit as a direct result of the occurrence of any of the following events: (i) a Casualty Occurrence with respect to such Unit if the Lessee shall have paid to the Lessor the amounts stipulated under §7 hereof; (ii) a voluntary transfer or other voluntary disposition by a Beneficiary of any interest in such Unit (except the transfer or disposition contemplated by the Trust Agreement or the subjection of the Units to the Security Documents) or the voluntary reduction by a Beneficiary of its interest in the rentals from such Unit under the Lease (except as provided in §3 hereof) unless, in each case, an Event of Default shall have occurred and be continuing; (iii) the amendment of the Security Documents without the prior written consent of the Lessee; (iv) the failure of a Beneficiary to claim the Investment Credit, Interest Deduction or ADR Deduction, as applicable, in its Federal income tax return for the appropriate year or the failure of a Beneficiary to follow proper procedure in claiming same; or (v) the failure of a Beneficiary to have sufficient liability for tax against which to credit such Investment Credit, or sufficient income to benefit from the Interest Deduction or ADR Deduction, as applicable.

The Lessor agrees that if, in the opinion of Lessee's tax counsel a bona fide claim to all or a portion of the Investment Credit, Interest Deduction or ADR Deduction with respect to part or all of any Unit exists in respect of which the Lessee is required to pay additional rental and interest or penalties as aforesaid to such Beneficiary as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by such counsel in order to sustain such claim. The Lessor may take such action prior to making payment pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest or penalties incurred in connection with the Investment Credit, Interest Deduction or ADR Deduction disallowed, recaptured or lost, which interest shall be computed at the rate of 9% per annum from the date of payment of such tax and interest or penalties to the date the Lessee shall reimburse the Lessor for such tax and interest or penalties in accordance with the provisions of this §17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

Upon the commencement of any proceeding (including the written claim or written threat of such proceeding) in respect of which additional rental may be sought under the fourth paragraph of this §17, the Lessor shall promptly, upon its knowledge thereof, given written notice of such commencement to the Lessee. In case such notice of any such commencement shall be so given, the Lessee shall be entitled to participate in any such proceeding at its own expense or, if it so elects, to assume responsibility for such proceeding, and in the latter event such proceeding shall be conducted by counsel chosen by and satisfactory to the Lessor who shall be involved in such proceeding, and the Lessor shall bear the fees and expenses of any additional counsel retained by the Lessor, but if the Lessee shall not elect to assume the responsibility for such proceeding, the Lessee will reimburse the Lessor for the reasonable fees and expenses of any counsel retained by it.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 10¾% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 15th Street and Pennsylvania Avenue, N.W., Washington, D. C. 20013, with a copy to the Beneficiaries in care of ITEL Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention of Contract Administration, and

(b) if to the Lessee, at 3600 West Broad Street, Richmond, Virginia 23230, attention of Leonard G. Anderson, Esq., Vice President and Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Lessor Acting as Trustee.* The representations, undertakings and agreements herein made on the part of the Lessor are made and intended

for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement pursuant to which the Lessor is acting as trustee.

Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and the Beneficiaries and any assignee of the Lessor and the Beneficiaries and, where the context so requires (including, but not limited to, certain of the provisions of §§6, 10 and 17 hereof), shall refer only to the Beneficiaries. For the purpose of computing the net return or the tax obligations of the Beneficiaries herein, the term Beneficiary as used herein shall include any affiliated group of corporations which includes a Beneficiary and which files a consolidated Federal income tax return.

The Trust Agreement pursuant to which American Security and Trust Company is acting as Trustee provides in Article VI thereof that upon the transfer by a Beneficiary of its interest in the trust estate, the transferee becomes thereby a Beneficiary. The Lessee agrees that a transferee which hereafter becomes a Beneficiary shall be entitled to all the rights of its transferor hereunder except that no transferee Beneficiary shall be entitled to the increased rentals provided for in § 17 hereof, unless such transferee Beneficiary shall be an institution, described in Section 6.03 of the Trust Agreement, which shall (by a supplement thereto) become a party to the Trust Agreement prior to the delivery and acceptance of its Units under the Security Documents.

§ 21. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 22. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first

set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

SEABOARD COAST LINE RAILROAD COMPANY,

by *Samuel G. Anderson*  
Vice President and Treasurer

[CORPORATE SEAL]

Attest:

*J. S. Williams*  
Assistant Secretary

AMERICAN SECURITY AND TRUST  
COMPANY, as Trustee,

by *John H. Johnson*  
Vice President

[CORPORATE SEAL]

Attest:

*Charles A. Grandle*  
Assistant Secretary

COMMONWEALTH OF VIRGINIA }  
CITY OF RICHMOND }

ss.:

On this 26<sup>th</sup> day of *August*, 1974, before me personally appeared LEONARD G. ANDERSON, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of SEABOARD COAST LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*J. H. Chapman*  
Notary Public

[NOTARIAL SEAL]

My Commission expires JUN 4 1978

DISTRICT OF COLUMBIA ss.:

On this 29<sup>th</sup> day of *August*, 1974, before me personally appeared *John R. Whitmore*, to me personally known, who, being by me duly sworn, says that he is a *Vice President* of AMERICAN SECURITY AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said trust company.

*Ella Kate Sherin*  
Notary Public

[NOTARIAL SEAL]

My Commission expires 1/31/79

**Schedule A  
to Lease**

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
General Electric Company, Model U-18-B, 1800 H.P. Diesel-Electric Locomotives.....	49	SCL 344-392 <i>#258230</i>
General Motors Corporation (Electro-Motive Division) Model SD-45-2, 3600 H.P. Diesel- Electric Locomotives.....	15	SCL 2045-2059